

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

JOHN DOE HM, an individual,

Plaintiff,

v.

*CITY OF CREVE COEUR, MISSOURI,
JOHN BEARDSLEE, Individually and in his
Official Capacity as Police Chief in the
Creve Coeur Police Department, et al.*

Defendants.

Cause No. 4:07-cv-00946-ERW

**NOTICE OF PLAINTIFF'S FAILURE TO COMPLY WITH THIS COURT'S
AUGUST 29, 2008 MEMORANDUM AND ORDER**

COME NOW Defendants City of Creve Coeur, Missouri and John Beardslee (collectively "Defendants"), and hereby notify this Court that Plaintiff has failed to fully comply with the Court's Memorandum and Order on Defendants' Motion to Compel, issued by this Court on August 29, 2008. Defendants notify the Court of the following:

1. As of September 11, 2008, Defendants had received a HIPAA compliant medical records release from Plaintiff. However, Defendants had not received any other responses to the Interrogatories or Request for Production which Plaintiff was ordered by this Court to provide. Likewise, Defendants had not received a check from Plaintiff in payment for the sanctions awarded to Defendants as a result of Plaintiff's ongoing failure to provide appropriate discovery responses.

2. On September 11, 2008, counsel for Defendants sent to counsel for Plaintiff a letter, attached hereto as Exhibit A, requesting all discovery responses and the sanctions check awarded by this Court be sent no later than Monday, September 15, 2008.

3. On September 15, 2008, Plaintiff's counsel sent to counsel for Defendant a letter, attached hereto as Exhibit B, indicating that the September 15, 2008 date was impossible to comply with because of Plaintiff's counsel's busy schedule. However, counsel for Plaintiff promised the discovery responses would be sent the following day.

4. On September 16, 2008, counsel for Defendant issued a letter to counsel for Plaintiff denying her claim that there had previously been any agreement to postpone discovery responses until after September 15, 2008. A copy of Defendants' counsel's letter is attached hereto as Exhibit C.

5. On September 16, 2008, Plaintiff sent his third supplemental responses to Interrogatories 3, 5, 7, 12, 14, 15, 16, 17, 18, 20 and 22. Plaintiff's discovery response to Interrogatory 3 continues to be incomplete in that Plaintiff has failed to provide a street or apartment number for the Olive Lake Drive address or to provide any addresses where he stayed during the period July 2004 through November 2004. Furthermore, with regard to Interrogatory 22, Plaintiff continues to fail to provide a telephone number for Michael Doe, Plaintiff's brother. Instead, the response indicates Michael Doe can be contacted through Plaintiff's counsel, despite the fact that Plaintiff's counsel has verified to counsel for Defendants that she does not represent Michael Doe. A copy of Plaintiff's Third Supplemental Interrogatory Responses are attached hereto as Exhibit D.

6. Plaintiff has utterly failed to provide discovery responses to Interrogatory 8 and 10 in violation of this Court's August 29, 2008 Memorandum and Order. Furthermore, Plaintiff has failed to provide supplemental responses to Request for Production 2, 3, 23, 27, 32 and 33, as required by this Court's August 29, 2008 Order. Finally, although Plaintiff's counsel claimed, in her letter of August 15, 2008 that the sanctions check in the amount of \$4,000 would be

forwarded the following day, Defendants have not received any such check or any verification that the check has been sent.

WHEREFORE, Defendants respectfully request this Court find Plaintiff in contempt for failure to abide by this Court's August 29, 2008 Order, award Defendants their attorneys fees incurred in connection with the filing of this Notice of Failure to Comply with the Court's Order, and for such other and further relief as the Court deems just and proper.

SANDBERG, PHOENIX & von GONTARD, P.C.

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and Chief John Beardslee

Certificate of Service

I hereby certify that on September 17, 2008, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon the following:

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/s/ Stacie A. Owens. _____